IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE A.K.BASHEER

FRIDAY, THE 5TH JANUARY 2007 / 15TH PAUSHA 1928

RFA.No. 398 of 2006()

OS.179/2006 of PRINCIPAL SUB COURT, NORTH PARAVUR
.....

APPELLANT/PLAINTIFF:

ASOK KUMAR, MANGUZHI HOUSE,
KUNNUKARA VILLAGE, PARAVUR TALUK.

BY ADV. SRI.DINESH R.SHENOY

RESPONDENTS: DEFENDANTS.
---

1. THE COHIN DEVASWOM BOARD, THRISSUR,
REPRESENTED BY ITS SECRETARY.

2. KOOTTALA KSHETHRA KSHEMA SAMITHY,
REPRESENTED BY ITS PRESIDENT, KUMARAN,
PATHUPARA HOUSE, VAYALKARA KARA, KUNNUKARA VILLAGE
PARVUR TALUK.

3. KOOTTALA KSHETHRA KSHEMA SAMITHY,
REPRESENTED BY ITS SECRETARY K.P.RAJASEKHARAN,
KALLANGATTU HOUSE, VAYALKARA KARA,
KUNNUKARA VILLAGE, PARAVUR TALUK.

4. KOOTTALA KSHETHRA KSHEMA SAMITHY,
REPRESENTED BY ITS VICE PRESIDENT, GOPI,
VETTANATHU HOUSE, VAYALKARA KARA,
KUNNUKARA VILLAGE, PARAVUR TALUK.

5. KOOTTALA KSHETHRA KSHEMA SAMITHY
REPRESENTED BY ITS TREASURER, SUKUMARAN,
KOOTTALA HOUSE, VAYALKARA KARA, KUNNUKARA VILLAGE,
PARAVUR TALUK.

6. KERALA KSHETHRA SAMRAKSHANA SAMITHY,
REPRESENTED BY ITS SECRETARY, P.N.HARIDAS,
KUNNUKARA VILLAGE, KUNNUKARA PANCHAYATH.

7. HINDU AIKYAVEDI, ALUVA TALUK, ANGAMALY,
REPRESENTED BY ITS SECRETARY, K.P.SURESH,
S/O. PARAMESWARAN.

8. SIVARAMAN NAIR,
KOLLANGATTU VEEDU, KUNNUKARA KARA & VILLAGE.

BY ADV. SRI.M.P.RAMNATH
SRI.KRISHNADAS P. NAIR
SRI.M.RAMESH CHANDER, SC, CDB

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON 05/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KURIAN JOSEPH & A.K.BASHEER,JJ.

R.F.A.No.398 of 2006

Dated this the 5th day of January, 2007

JUDGMENT

Basheer, J.

Appellant is the plaintiff in O.S.No.179/2006 on the file of the Principal Subordinate Judge's Court, North Paravur. The suit was filed for declaration of title, fixation of boundary and for consequential injunction. The court below considered the question of maintainability of the suit as a preliminary issue and by order dated August 8, 2006 it has been held that the suit was not maintainable on the ground that it is barred under Section 124 of the Travancore Cochin Hindu Religious Institutions Act, 1950.

2. Learned counsel for the parties have addressed the court elaborately. In view of the order that we propose to pass we do not deem it necessary to deal with the other grounds. Learned counsel for the appellant submits that the appellant is prepared to institute a fresh suit before the appropriate civil court since he had already issued notice under Section 124 of the Act. He prays for some breathing time to

enable him to prefer the suit. He further submits that the appellant may be permitted to withdraw the appeal and the suit with liberty to file a fresh one.

3. Learned counsel for the respondents takes strong exception to the grant of any liberty to the appellant to institute a fresh suit. It is contended by him that the past conduct of the appellant would disentitle him to the liberty to file a fresh suit. When this appeal was admitted this court had granted an order of interim injunction restraining the respondents, their agents or men from interfering with the plaintiff's peaceful possession and enjoyment of the plaint schedule properties in the suit or "making any constructions therein (outside the temple compound of the temple)" till the disposal of the appeal. Learned counsel for the appellant submits that the interim order of injunction may be kept in force for one week till the appellant is able to file a fresh suit and obtain appropriate interim orders from the civil court.

4. Our attention has been invited to a sketch which purportedly pertains to the temple property including the property claimed by the

appellant. Though the sketch is not drawn to scale, it shall form part of the records. It is marked as Ext.X1. Learned counsel for the respondents submits that the respondents do not propose to make any construction on the east, north and south of the existing temple where Brahmaraksha Thara, Manputtu, Kalkettu etc. are situated. The above submission is recorded. We have referred to the above sketch only to consider the request made by the appellant that the interim injunction granted by this court may remain in force for a period of one week from today. We make it clear that it shall not be relied on by the parties in any of the proceedings; either pending or future. In the peculiar facts and circumstances of the case we are satisfied that the prayer can be granted.

5. However, it is clarified that the order of injunction is limited to construction activity only on the east, north and south of the temple structure. It is further made clear that it will be open to the respondents to go ahead with the constructions on the western side including that of the new Balabhadra temple, Nagathara, etc. We hasten to add that it will be open to the civil court to pass appropriate

interim orders on any interlocutory application that may be moved by the appellant or the respondents in the fresh suit strictly on its merit and in accordance with law.

6. The prayer for permission to withdraw the appeal and suit is granted with liberty as mentioned above. This appeal and O.S.No.179/2006 on the file of the Principal Subordinate Judge's Court, North Paravur are dismissed are withdrawn. The interim order in I.A.No.3360/2006 dated 22-8-2006, subject to the above clarification, will continue for another one week.

(KURIAN JOSEPH, JUDGE)

(A.K.BASHEER, JUDGE)

ahg.